C-40

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Sent: Monday, July 02, 2007 3:49 PM
To: Loan Guarantee Office
Cc: sshaw@powerholdingsllc.com; 'Bob Gilpin'
Subject: RIN 1901-AB21

Power Holdings of Illinois LLC (PH) wishes to comment on the proposed policies and procedures applicable to DoE's loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005.

In general, PH applauds the DoE for taking this important step to implement key components of the President's Advanced Energy Initiative. We think it critical to the development of new energy technology, including coal gasification, that the Federal government support bold, innovative projects such as these.

We have specific comments in areas that the NOPR requests. We also have additional comments about the proposed policies and procedures, which we set forth below.

Technologies

We concur with the definition of "new or significantly improved technologies" set forth in the NOPR. We support the definition of "general use" as involving technology installed in five or more projects, rather than as involving technology in use for more than five years. We also support the use of different number of projects depending on the technology, rather than the same standard number of projects applying to all technologies.

In addition, we urge DoE allow the definition of "new technology" to include projects that use existing, proven technologies in innovative ways that are consistent with the overall goals for the loan guarantee program.

Project Costs

We concur with the definition of "project costs" set forth in the NOPR.

Solicitation

We concur with the specific solicitation process set forth in the NOPR, including the concept of using Pre-Applications where appropriate, subject to our comments about evaluation criteria set forth below in "Other Comments".

We disagree strongly with the DoE position that the proposed rule, when final, shall not apply to the Pre-Applications, Applications, Conditional Commitments, and Loan Guarantee Agreements from the August 2006 solicitation. There are a number of differences between the guidelines that form the basis of the August 2006 solicitation and the proposed rule as set forth in the NOPR, including differences in:

- information that the DoE requires from applicants in Pre-Applications and Applications
- criteria that DoE will use to evaluate Pre-Applications and Applications
- terms of the loan guarantee that DoE will grant upon acceptance of a given Application.

We think it unreasonable and indeed unfair that Pre-Applications submitted pursuant to the guidelines, which guidelines did not receive any legal review or public hearing, might benefit from different treatment than those submitted pursuant to regulations that have received such review and hearing.

Payment of the Credit Subsidy Cost
We concur with the general principles set forth in the rule concerning this cost. We suggest and encourage the DoE to set forth in its rule further detailed definition of "estimated" in the phrase "estimated cash flows", including how DoE intends to estimate the cash flows, and, if DoE intends to include the likelihood of "Payments by the Government...", how DoE intends to estimate that likelihood.

Assessment of Fees
We concur with the fee structure set forth in the NOPR.

Financial Structure
We concur with the 90 percent loan guarantee limitation and the prohibition on "stripping".

While we concur with the concept that Project Sponsors have a significant equity stake in a project, we do not concur with a fixed, numeric minimum equity percentage threshold or requirement. Equity structure in a given project can vary with a number of factors, including technology used and the market for the project's products. Imposing a fixed, numeric minimum equity percentage threshold or requirement for projects that might for good reason fall below such a threshold may exclude otherwise worthy projects.

We concur that the DoE should have authority to waive the credit rating requirement. However, we think that a simple project size threshold for waiting the requirement oversimplifies the circumstances under which the DoE would consider such waivers. Rather than a simple project size threshold, we suggest the DoE set forth other criteria, such as ratio of project debt to sponsor equity, the duration of the loan guarantee, or the credit subsidy cost, in addition to project size.

Eligible Lenders
We concur with the definition and rules concerning eligible lenders.

FCRA
We strongly encourage the DoE to follow the Government Accountability Office interpretation of Title XVII and FCRA in carrying out the loan guarantee program.

Default and Audit Provisions
We concur with the provisions as set forth in the NOPR.

Tax Exempt Debt
We concur with the provisions as set forth in the NOPR.

Full Faith and Credit
We concur with the provisions as set forth in the NOPR.

Other Comments

In addition to these comments on the subjects as requested in the NOPR, we wish to highlight concerns about the criteria that DoE intends to use to evaluate Pre-Applications and Applications.

Concerning Pre-Applications, §609.5(a) of the proposed rule sets forth three criteria that DoE intends to use to evaluate Pre-Applications, and to decide whether to invite a party that submits a Pre-Application to submit an Application. As stated, these three criteria do not appear to provide for any substantive review of the merits of a Pre-Application. One criterion, §609.5(a)(3), appears to allow DoE to include any other requirements it deems appropriate.

In addition, in §609.5(c) DoE sets forth other evaluation criteria, including:

- Commercial viability of the proposed project
- Technology to be employed in the project
- Relevant experience of the principal(s)
- Financial capability of the project sponsor.

DoE will use these criteria "to determine if there is sufficient information in the Pre-Application" to evaluate the project. It is not clear what each of the criteria mean, how DoE will apply them to the Pre-Applications, or how they relate to the criteria that DoE will use to evaluate Applications.

Otherwise, the Pre-Application process does not appear to serve any screening function, or alternatively allows DoE to use arbitrary or varying criteria that have not withstood the legal and regulatory review process.

If DoE wishes to solicit Pre-Applications, we strongly urge DoE to establish substantive criteria similar to those used to evaluate Applications. Otherwise, we strongly urge DoE to eliminate the Pre-Application process.

Concerning Applications, §609.7(b) of the proposed regulations sets forth sixteen criteria that DoE will use to evaluate Applications. We understand that the criteria, and the regulations and Title XVII generally, intend to identify technologies and projects that promote the President's Advanced Energy Initiative, and which require a Federal loan guarantee for the Project Sponsor to attract sufficient investment. In that spirit, the DoE does not seek to support technologies and projects that:

1. lack reasonable commercial potential, or
2. would attract sufficient commercial support on their own, without a Federal loan guarantee.

As stated, most of the sixteen criteria in §609.7(b) appear to screen projects with respect to 1. above. None of the criteria appear to identify and therefore eliminate from consideration projects that would attract sufficient commercial support on their own. We fear that these criteria will favor larger, established Project Sponsors, including some of the largest corporations in the U.S., and will discourage smaller, innovative start-up ventures from applying for loan guarantees under this program. For this reason, we strongly urge DoE to establish criteria that

will address 2. above. These criteria would, for example, consider the relative financial position of all qualified Project Sponsors, and allow DoE to give priority to provide loan guarantees to financially-sound Project Sponsors with promising technology, but which nonetheless lack the same level of financial strength as some larger, more-established applicants.

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